AO 91 (Rev. 11/11) Criminal Complaint

UNITED STATES DISTRICT COURT

for the

District of Columbia

United States of America v. Richard Franklin Barnard, (XX/XX/XXXX) Jeffery Shane Witcher, (XX/XX/XXXX)	Case: 1:21-mj-00262 Assigned to: Judge Faruqui, Zia M Assign Date: 2/24/2021 Description: COMPLAINT W/ARREST WARRANT

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of January 6, 2021 in the county of _____ in the _____ District of Columbia, the defendant(s) violated:

Code Section *Offense Description*

Richard Franklin Barnard:
18 U.S.C. § 1752(a)(1) - Unlawful Entry on Restricted Building or Grounds
18 U.S.C. § 1752(a)(2) - Unlawful Entry on Restricted Building or Grounds
40 U.S.C. § 5104(e)(2)(D)- Violent entry and disorderly conduct on Capitol Grounds
40 U.S.C. § 5104(e)(2)(G)- Parading, Demonstrating or Picketing in a Capitol Building

Jeffery Shane Witcher:
18 U.S.C. § 1512(c)(2)- Obstruction of an Official Proceeding
18 U.S.C. § 1752(a)(1) - Unlawful Entry on Restricted Building or Grounds
18 U.S.C. § 1752(a)(2) - Unlawful Entry on Restricted Building or Grounds
40 U.S.C. § 5104(e)(2)(D)- Violent entry and disorderly conduct on Capitol Grounds
40 U.S.C. § 5104(e)(2)(G)- Parading, Demonstrating or Picketing in a Capitol Building

This criminal complaint is based on these facts:

See attached statement of facts.

☑ Continued on the attached sheet.

Mark Winters

Complainant's signature

FBI Special Agent Mark Winters

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by Telephone (specify reliable electronic means).

Date: 02/24/2021

2021.02.24 15:27:15 -05'00'

Judge's signature

City and state: Washington, D.C.

Zia M. Faruqui, U.S. Magistrate Judge

Printed name and title

Case: 1:21-mj-00262
Assigned to: Judge Faruqui, Zia M
Assign Date: 2/24/2021
Description: COMPLAINT W/ARREST WARRANT

STATEMENT OF FACTS

Your affiant, Mark Winters, is a Special Agent assigned to the Central Texas Joint Terrorism Task Force. In my duties as a special agent, I have led arrests on subjects with known racially motivated violent extremist tendencies, as well as those with militia-based ideologies. I have authored search warrant and arrest warrant affidavits, and participated in the execution of such warrants, leading to the seizure of controlled substances, firearms, records, cellular telephones, and other evidence. Additionally, I have conducted interviews and interrogations of individuals ranging from victims to violent gang members. I have also participated in investigations of those with links to domestic terrorism. I am experienced in the methods used by homegrown violent extremists (HVEs), among others, to socially engineer and manipulate the unsuspecting in order to achieve their goals. Currently, I am also tasked with investigating criminal activity in and around the Capitol grounds on January 6, 2021. As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of a violation of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On January 8, 2021, an individual (hereafter W-1) contacted the National Threat Operations Center to report an individual who was inside the Capitol on January 6, 2021. W-1 reported that he was notified by a second individual (hereafter W-2) that a mutual friend, Jeffery Shane WITCHER, was inside the U.S. Capitol Building on January 6, 2021. W-2 informed W-1 that WITCHER had sent him several videos from his time inside of the Capitol, but W-2 did not wish to have them sent to him.

On January 16, 2021, Special Agents of the Houston Division interviewed W-2 regarding his contact with WITCHER and recovered the videos from his phone, to the include the image pictured below (Figure 1). W-2 also passed the contact information for the local FBI field office to WITCHER. Shortly thereafter WITCHER contacted the FBI, requesting an interview. WITCHER's contact information, as well as the videos, were then passed to the San Antonio Division.

Figure 1 Witcher (right)-Barnard (left) Selfie with Timestamp

At approximately 0920 AM CST on January 26, 2021, WITCHER made telephonic contact with the FBI, and informed the interviewing Agents in Austin that he was anxious to meet and conduct an interview regarding his involvement in the riot that occurred on January 6, 2021 at the United States Capitol building in the District of Columbia (DC). WITCHER stated he had already deleted most of the videos and pictures he took from the Capitol riot on January 6, 2021 while he was at the Atlanta airport. WITCHER stated he saw what was happening on the news, and felt the videos could be self-incriminating, but insisted he was not deleting the files as a way of destroying evidence. He also agreed to bring his phone for the interview, and would discuss access to the phone upon meeting the Agents.

During the interview WITCHER stated he traveled to the Capitol on January 5, 2021, arriving that evening, and stayed at the Moxy hotel in Washington D.C. WITCHER traveled with two close friends, one of whom he later identified as Richard BARNARD, who also went with him inside the Capitol building. WITCHER had met BARNARD in the United States Marine Corps (USMC), hence the above photo featuring Barnard on the left with his USMC hat. WITCHER later left the USMC to serve in the United States Army (USA). As a combat veteran, WITCHER believed free speech across the country was being censored and most people were tone deaf to discussion and have become disenfranchised with the political process. He stated his purpose was to take part in civil disobedience, which he felt was necessary to facilitate a dialogue, only he had expected it to be nonviolent and peaceful.

On his way to the Capitol, WITCHER stated he stopped for a photo at the Trump Hotel at approximately 1:02 PM EST. At the time the Capitol building was initially breached, he was approximately 300 yards away, closer to the Washington monument. He then joined the group of people who were proceeding into the Capitol, noting a significant lack of police personnel or barriers preventing him and others from making entry. At approximately 2:19 PM EST, WITCHER and his friend BARNARD made entry into the Capitol building, where they came upon a large rotunda filled with law enforcement officers and protestors. Some of WITCHER's interactions with the LEOs and violent protestors was captured on WITCHER's cell phone.

During the interview, WITCHER agreed to a consent search of his cell phone and, if necessary, his Apple iCloud account. Agents directed WITCHER to the phone's deleted files, where they were able to locate the videos and pictures that WITCHER had previously thought deleted. All of these files were recovered, and two videos taken from inside the Capitol building were sent to Special Agent Mark Winters Bureau issued cell phone. Included in these images was the same image identified by W-2, pictured above (Figure 1), where WITCHER identified himself, and BARNARD. Additionally, the photograph below (Figure 2) depicting BARNARD inside the U.S. Capitol was also retrieved from WITCHER’s cell-phone.

Figure 2 Barnard Side Profile 1

In the first video retrieved from WITCHER's phone, WITCHER appears to be walking towards the rotunda where the line of police officers was overpowered by the crowd. WITCHER can be heard saying, "I am in the White House! We crashed this. Our house! We did it! We did it, family, we did it! We did it! We're in the White House! I'm out here with my brother Richard Barnard-no, no, no, let's go! It's our house, it's our house! Our house! Our house! Hey family, we did it. We came, and we did it. We're inside the White House. Our house." WITCHER later clarified during his interview that he was so emotional and invested in the moment, he briefly forgot he was in the Capitol building, and not the White House. In the second video, which is recorded from inside the rotunda, WITCHER's voice can be heard saying, "We're in the rotunda. We're in the rotunda. Our house! Our house! Our house! Our house! Our house! Our house! Our house! Our house! Our house! Our house! Our house! Our house!" WITCHER's voice can be heard shouting to law enforcement, "Our house! Our house! Our house! Don't be a traitor! Fulfill your Constitutional duties, man. Do or die! Do or die! Do or die! Be with us! Be with us! Be with us!" WITCHER continues shouting to law enforcement saying, "You are us! You are us! You are us! You are us! Hey man, you grew up in the same place I grew up, you're us. Hey man, you are us, you are us, you're us, guy. Hey man, don't forget your Constitutional duties. Don't forget your oath, brother. Don't forget your oath! Do not forget your oath! You are us! You are us! You are us!" A few seconds later, a heavy thud can be heard in the video, which WITCHER described during his interview as someone throwing a fire extinguisher at the police officers. WITCHER can then be heard shouting, "Don't do that! No, no! No! These are not our enemies. No, don't do it." WITCHER then joins in the chant in the rotunda, saying, "Our house! Our house! Man, I'm so proud of us."

WITCHER had been initially hesitant to share the name and contact information of his close friend Richard BARNARD, but at approximately 4:00 PM CST, WITCHER contacted the interviewing Agents once more and provided that information.

The following morning, January 20, 2021, Agents contacted BARNARD telephonically to arrange a time to meet at the Austin Resident Agency for a consensually recorded interview. BARNARD agreed to the interview, and came to the Austin RA at 2:00 PM CST, January 26, 2021, where he was advised of

his rights, informed he was in a recorded room, and presented with a consent to search form for his electronics and digital media, which he signed.

During the interview BARNARD stated he arrived in Washington D.C. on the evening of January 5, 2021 via air travel at approximately 9:00 PM EST. On January 6, 2021, BARNARD went to former President Donald Trump's speech before moving to the Capitol building in the hopes of being closer to the President when he announced he would march to the building. BARNARD believed there were people at the Capitol who were already attempting to breach it before he ever arrived. At approximately 2:02 PM EST, BARNARD made entry into the Capitol building with WITCHER, and walked into a large rotunda where he encountered multiple law enforcement officers. More individuals in the crowd began to push against the police officers, and BARNARD, with at least three other individuals, shielded the police officers with their bodies while the crowd moved past. The officers, along with BARNARD, moved to a shattered window near the front entrance, where BARNARD and his friend, Jeffery Shane WITCHER exited the U.S. Capitol building. All of these events occurred over the span of approximately 15-20 minutes, or 2:02 PM EST to 2:18 PM EST. BARNARD stated he did not originally plan to go into the Capitol building. BARNARD stated he stayed at the Moxy hotel, and recalled following the election results in Georgia that night through the check-in process at the hotel. BARNARD flew out of Washington D.C. on January 7, 2021. BARNARD became scared when his wife texted him on January 6, 2021, telling him that people had died during the protests. Barnard stated he then decided to delete the videos and photographs from his phone. BARNARD still thought it felt good to be there and was a good experience up until the moment he entered the Capitol. BARNARD allowed investigators to examine his cell phone after signing a consent to search mobile device and electronic data form. No videos or photos could be recovered from the device, but BARNARD offered to send whatever he could if he found other materials later.

During the course of the investigation your affiant also retrieved video footage from “cantcensortruth.com” where a video labeled “THERESISTANCE.VIDEO” captured WITCHER and BARNARD inside the U.S. Capitol building. Specifically, both defendants can be seen wearing the same clothing as depicted in the above photograph (Figure 1) where WITCHER positively identified himself and BARNARD. Screenshots of this video are pictured below in Figure 3 and 4.

Figure 3 Witcher (left)-Barnard (right) Inside Capitol

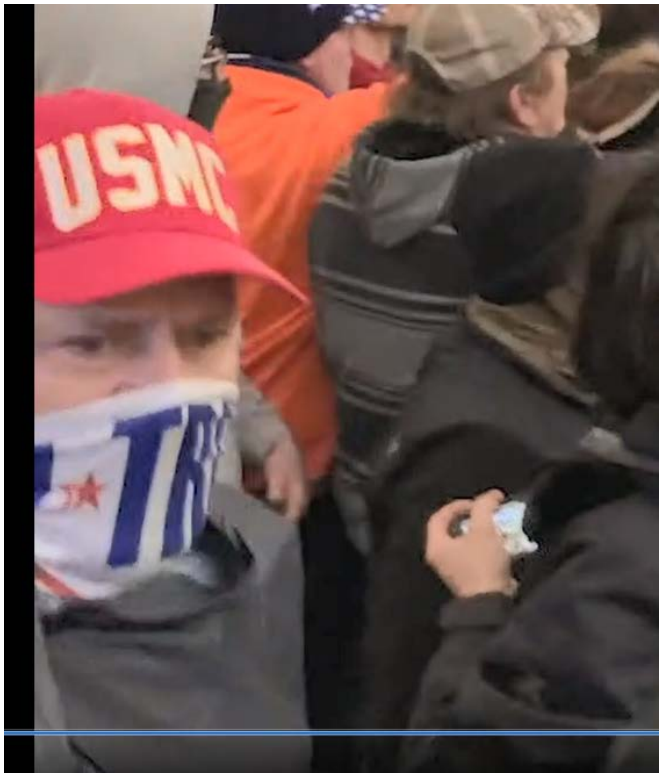

Figure 4 Barnard Side Profile 2

Based on the foregoing, your affiant submits that there is probable cause to believe that Jeffrey Shane WITCHER and Richard Franklin BARNARD violated 18 U.S.C. § 1752(a)(1) and (2), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the

orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions. For purposes of Section 1752 of Title 18, a "restricted building" includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance.

Your affiant submits there is also probable cause to believe that Jeffery Shane WITCHER and Richard Franklin BARNARD violated 40 U.S.C. § 5104(e)(2)(D) and (G), which makes it a crime to willfully and knowingly (D) utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress;; and (G) parade, demonstrate, or picket in any of the Capitol Buildings.

Finally, your affiant submits there is probable cause to believe that Jeffery Shane WITCHER violated 18 U.S.C. § 1512(c)(2), which makes it a crime to obstruct, influence, or impede any official proceeding, or attempt to do so. Under 18 U.S.C. § 1515, congressional proceedings are official proceedings.

Mark Winters

Special Agent Mark Winters
Federal Bureau of Investigation

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1

by telephone, this 24th day of February 2021.

2021.02.24
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ZIA M. FARUQUI
U.S. MAGISTRATE JUDGE